

COPY

JUN 17 2015

CHRISTOPHER D. RICH, Clerk  
By TEMILE GRANT  
DEPUTY

**Jason D. Williamson**  
**AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION**  
jwilliamson@aclu.org  
125 Broad Street  
New York, New York 10004  
(212) 284-7340  
(212) 549-2654 (fax)  
*Pro hac vice application pending*

**Richard Eppink**  
**AMERICAN CIVIL LIBERTIES UNION  
OF IDAHO FOUNDATION**  
reppink@acluidaho.org  
P.O. Box 1897  
Boise, Idaho 83701  
(208) 344-9750, ext. 1202  
(208) 344-7201 (fax)  
Idaho State Bar no. 7503

*Attorneys for Plaintiffs*

**Andrew C. Lillie**  
**HOGAN LOVELLS US LLP**  
andrew.lillie@hoganlovells.com  
One Tabor Center, Suite 1500  
1200 Seventeenth Street  
Denver, CO 80202  
303-899-7300  
303-899-7333 (fax)

**Kathryn M. Ali**  
**HOGAN LOVELLS US LLP**  
kathryn.ali@hoganlovells.com  
555 Thirteenth Street NW  
Washington, D.C. 20004  
(202) 637-5600  
(202) 637-5910 (fax)

**Bret H. Ladine**  
**HOGAN LOVELLS US LLP**  
bret.ladine@hoganlovells.com  
3 Embarcadero Center #1500  
San Francisco, CA 94111  
(415) 374-2300  
(415) 374-2499 (fax)

**Jenny Q. Shen**  
**HOGAN LOVELLS US LLP**  
jenny.shen@hoganlovells.com  
4085 Campbell Ave., Suite 100  
Menlo Park, CA 94025  
650-463-4000  
650-463-4199 (fax)  
*Pro hac vice applications pending*

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

TRACY TUCKER, JASON SHARP, NAOMI  
MORLEY, and JEREMY PAYNE, on behalf  
of themselves and all others similarly situated,

Plaintiffs,

vs.

STATE OF IDAHO; C.L. "BUTCH" OTTER,  
in his official capacity as Governor of Idaho;

Case No. CV 00 1510240

**CLASS ACTION COMPLAINT FOR  
INJUNCTIVE AND DECLARATORY  
RELIEF**

HON. MOLLY HUSKEY, in her official capacity as a member of the Idaho State Public Defense Commission; DARRELL G. BOLZ, in his official capacity as a member of the Idaho State Public Defense Commission; SARA B. THOMAS, in her official capacity as a member of the Idaho State Public Defense Commission; WILLIAM H. WELLMAN, in his official capacity as a member of the Idaho State Public Defense Commission; KIMBER RICKS, in his official capacity as a member of the Idaho State Public Defense Commission; SEN. CHUCK WINDER, in his official capacity as a member of the Idaho State Public Defense Commission; and REP. CHRISTY PERRY, in her official capacity as a member of the Idaho State Public Defense Commission,

Defendants.

## **INTRODUCTION**

1. More than five years ago, the State of Idaho asked the National Legal Aid and Defender Association (“NLADA”) for a report on its public-defense system. That report found, unequivocally, that “none of the public defender systems in the sample counties are constitutionally adequate.” Specifically, the report identified a number of specific areas of concern with respect to trial-level indigent-defense delivery in Idaho. These include the widespread use of fixed-fee contracts; extraordinarily high attorney caseloads and workloads; lack of consistent, effective, and confidential communication with indigent clients; inadequate, and often nonexistent, investigation of cases; lack of structural safeguards to protect the independence of defenders; lack of adequate representation of children in juvenile and criminal court; lack of sufficient supervision; lack of performance-based standards; lack of ongoing training and professional development; and lack of any meaningful funding from the State.

2. Five years later, the State has failed to fix this unconstitutional system. The Governor's Commission passed the buck by recommending that the Legislature create a special study committee. That legislative committee then passed the buck by establishing yet another commission to make recommendations to the legislature. In January 2015, the Governor acknowledged in his State of the State address that "the courts have made it clear that our current method of providing legal counsel for indigent criminal defendants does not pass constitutional muster." Astoundingly, the State failed yet again in the recently concluded 2015 legislative session to fund or improve its public-defense system. Because the executive and legislative branches refuse to take the necessary actions to fix Idaho's public-defense system, it falls on this Court to ensure that "[c]onstitutional rights, as well as this Court's duty to faithfully interpret our constitution and the federal constitution, do not wane before united efforts of the legislature and the governor."<sup>1</sup>

3. Plaintiffs Tracy Tucker, Jason Sharp, Naomi Morley, and Jeremy Payne bring this civil-rights class-action lawsuit pursuant to 42 U.S.C. § 1983 on behalf of themselves and all those similarly situated. They seek declaratory and injunctive relief for defendants haled before state courts throughout Idaho from the ongoing injuries and harm caused by the continuing failure of Defendants (the "State") to provide effective legal representation to indigent criminal defendants across the State of Idaho, in violation of the Sixth and Fourteenth Amendments to the United States Constitution, of Article 1, Section 13, of the Idaho Constitution, and Idaho statutes and regulations.

4. Plaintiff Tracy Tucker was arrested in Bonner County on March 6, 2015, after being charged with attempted strangulation and domestic battery in the presence of a child. Although

---

<sup>1</sup> *Miles v. Idaho Power Co.*, 116 Idaho 635, 640 (1989).

he was assigned a public defender, Mr. Tucker was not represented by counsel at his initial appearance, during which the court set his bail at \$40,000. Without the guiding hand of counsel at that initial proceeding, Mr. Tucker was unable to make any arguments to the court to justify a reduction in the bail amount. Since Mr. Tucker could not afford to post bail, he remained in the Bonner County Jail for the next three months. During his time in custody, Mr. Tucker met with his attorney just three times, for a total of approximately 20 minutes. Two of those “meetings” occurred in court, during Mr. Tucker’s subsequent court appearances. In addition, during his three months in jail, Mr. Tucker attempted, unsuccessfully, to reach his attorney by phone more than 50 times. As of 10 days prior to Mr. Tucker’s trial date, his attorney’s demanding schedule had prevented him from conducting any meaningful investigation into Mr. Tucker’s case, reviewing and explaining to Mr. Tucker the relevant discovery materials, or discussing trial strategy with Mr. Tucker. On June 2, 2015, Mr. Tucker pleaded guilty to attempted strangulation, at which time he was released from jail. Mr. Tucker is scheduled to be sentenced on August 3, 2015, and faces up to 15 years in prison.

5. Plaintiff Jason Sharp was arrested in Shoshone County on May 16, 2014, pursuant to a warrant charging him with burglary and grand theft. Although he was assigned a public defender, Mr. Sharp was not represented by counsel at his initial appearance on May 20, 2014, during which the court set his bail at \$50,000. Mr. Sharp was unable to make the necessary arguments to the court to justify a reduction in the bail amount at that initial proceeding. Since Mr. Sharp could not afford to post bail, he remained in the Shoshone County Jail for approximately two weeks. Without the help of his lawyer, Mr. Sharp was subsequently able to convince the court that his bail amount was inappropriate because it was based on the erroneous belief that he was on probation at the time of his arrest. The court eventually agreed and reduced

his bond to \$5,000. Unfortunately, Mr. Sharp was still unable to afford to pay his bail. Fearing that he would lose his job if he remained in jail, Mr. Sharp contacted his employer, who agreed to write a letter to the court vouching for Mr. Sharp and recommending his release. The court released Mr. Sharp from custody after receiving the letter of support from his employer. Over the course of the last year since his release, however, Mr. Sharp has been unable to communicate effectively with his attorney regarding the status of his case. For instance, despite repeated requests from Mr. Sharp, his attorney has not yet provided him with a copy of the discovery materials in his case, leaving Mr. Sharp unclear about what evidence the State does or does not have against him, and making it impossible for Mr. Sharp to participate meaningfully in the development of his defense. Moreover, aside from several motions to continue his jury trial, Mr. Sharp's attorney has not filed any substantive motions on his behalf. Even the court's decision to reduce Mr. Sharp's bond to \$5,000, and ultimately to release him on his own recognizance, was the result of Mr. Sharp's own advocacy in court and his employer's willingness to support him, rather than a response to any motion filed by his attorney. Mr. Sharp is scheduled to go to trial on July 14, 2015, and faces up to 30 years in prison if convicted on both counts.

6. Plaintiff Naomi Morley was arrested in Ada County on March 14, 2014, following a serious single-car accident in which she was severely injured. Ms. Morley, who was 56 years old at the time of her arrest, was charged with driving under the influence and possession of a controlled substance after officers purportedly discovered prescription medication and drug paraphernalia. Although an Ada County public defender was present during Ms. Morley's initial appearance by video, Ms. Morley did not have an opportunity to speak with that lawyer and, ultimately, the Ada County Public Defender's office determined that it had a conflict of interest in representing Ms. Morley. The Court set Ms. Morley's bail at \$15,000 at her initial

appearance. Since she could not afford bail, Ms. Morley remained in the Ada County Jail until her bail was reduced three weeks later, notwithstanding the recent serious injuries she had sustained. Since then, Ms. Morley's attorneys have been unable to provide her with adequate representation. For instance, Ms. Morley was told that if she wanted to retain an expert to challenge the State's contentions regarding the alleged presence of drugs in her system at the time of the accident, and/or to do any outside testing to challenge the prosecution's allegations, she would have to pay for such services herself. Also, despite informing her lawyer that another person would confess responsibility, it was only through Ms. Morley's own efforts that she recently obtained a sworn affidavit from the person acknowledging responsibility. On information and belief, Ms. Morley's lawyer's caseload has been so large, and his resources so few, that he has been unable to review Ms. Morley's extensive comments on the police reports in her case or to investigate the vehicle involved in the accident before the state scrapped it, destroying that evidence. Further, Ms. Morley has been unable to communicate effectively or consistently with her attorney, and is concerned that her attorney is pressuring her to plead guilty because he does not have the time or resources to prepare sufficiently for trial. Most recently, Ms. Morley turned down a plea offer that would have required her to spend 10 years in prison. She is scheduled to go to trial on June 29, 2015, and faces over 15 years in prison if convicted on all counts.

7. Plaintiff Jeremy Payne was incarcerated at the Payette County Jail on January 25, 2015, after being arrested for possession of a controlled substance and drug paraphernalia. Although Mr. Payne was assigned a public defender, he was not represented by counsel at his initial appearance, during which the court set his bail at \$30,000. Since he was not able to afford bail, Mr. Payne remained in jail pending resolution of his case. Mr. Payne was released from Payette

County Jail on June 9, 2015, after the State failed to take the case to trial in a timely fashion. Unfortunately, during the five months he was in custody, Mr. Payne was unable to communicate with his attorney on a consistent basis. In light of the many other felony cases assigned to his attorney, Mr. Payne only met with counsel twice at the County Jail, both for very short periods of time. Aside from those brief meetings, Mr. Payne has only met with his attorney in court—for even shorter periods of time—just prior to his court appearances, and has been unable to contact his attorney by phone despite repeated attempts. Indeed, Mr. Payne has spent a total of approximately 30–45 minutes with his attorney since the inception of his case. Moreover, to date, Mr. Payne’s attorney has been unable to conduct any meaningful investigation into his case, review the relevant discovery with his client, or share with Mr. Payne his thoughts with regard to trial strategy and related matters. Mr. Payne’s preliminary hearing was waived and his trial has now been continued three times. Mr. Payne is now scheduled to go to trial on July 21, 2015, and faces up to seven years in prison if convicted.

8. Sadly, the circumstances surrounding the named Plaintiffs’ representations are not unique to them. Rather, they exemplify the experiences of thousands of indigent defendants across the State, who have been denied their right to effective counsel as a result of the State’s failure to provide the necessary resources, robust oversight, and specialized training required to ensure that all public defenders can handle all of their cases effectively and in compliance with state and federal law.

9. Despite amendments to Idaho’s public-defender statutes that were passed in 2014 through a bill enacted as the “Idaho Public Defense Act,” the current, patchwork public-defense arrangement in Idaho remains riddled with constitutional deficiencies and fails, at all stages of the prosecution and adjudication processes, to ensure adequate representation for indigent

defendants in both criminal and juvenile proceedings in Idaho. Although the State has been keenly aware of this failure to provide for the basic rights of indigent criminal defendants for years, without a guiding state-wide scheme, the majority of Idaho counties have failed to implement standards and requirements that satisfy either statutory or constitutional mandates. This has created a flawed system that forces many inexperienced and inadequately trained attorneys to juggle too many cases without enough resources. The result is constitutionally deficient representation of indigent defendants across the state.

10. Certainly, if public-defense attorneys in Idaho had their way, they would be well equipped with the resources and training necessary to do their jobs effectively at all stages of the proceedings against their clients. But, due to the State's pervasive and persistent constitutional and statutory failures—including, but not limited to, the State's failure to provide adequate funding or relevant state-wide directives—public defenders are not able to provide the zealous representation constitutionally required of them in all of their cases.

11. Indigent defendants in most Idaho counties, including the named Plaintiffs, are not represented by counsel at their initial appearances, during which a number of critical events often occur, including bail determinations, setting of pretrial release conditions, waivers of rights, entry of pleas, sentencing, and off-the-record discussions between the prosecutor and the defendant—and sometimes the presiding judge—regarding the defendant's case.

12. Because public defenders in most instances do not have the staff or resources to be present at initial appearances, indigent defendants are most often left to fend for themselves during these critical proceedings, without the assistance of counsel. Counsel at this stage is especially important to, among other things, presenting reasoned legal arguments to reduce bail (including, but not limited to, arguments related to the strength of the State's case, as well as the



defendant's income, ability to pay, and ties to the community), advising their clients about how to plead, and negotiating with prosecutors regarding potential plea agreements and pretrial-release terms. Further, the absence of counsel at initial appearances causes or contributes to the unnecessary detention of indigent defendants—sometimes for extended periods of time—who may otherwise have been released while they await resolution of their cases; limited ability of indigent defendants to interact with their lawyers, provide and review case materials, and assist in the evaluation of their cases and preparation of their defenses; significant impact to indigent defendants' work and family lives; insincere, uninformed, or uneducated pleas entered, partly or entirely, in order to obtain immediate release; and other adverse impacts, many times with lifelong consequences.

13. Even after counsel has been appointed, indigent defendants in many counties, including defendants not in custody, lack sufficient access to the public defenders assigned to their cases. For example, defendants frequently do not have the opportunity to meet with their public defenders for purposes of receiving and reviewing the discovery materials related to their cases. Under such conditions, it is nearly impossible for defendants to assist in their own defenses or to understand and remain abreast of developments in their own cases.

14. Moreover, in many Idaho counties, there are disincentives for public defenders to engage experts or investigators because such costs may not be covered by public-defender contracts. Accordingly, public defenders routinely forgo the use of investigators and experts to carry out basic tasks, such as identifying and interviewing witnesses, and reviewing and analyzing evidence. In most instances, defense counsel must request additional resources from the court to hire an investigator or an expert, and, upon information and belief, such requests are rarely made,

in part because some public defenders believe that the available resources are so limited that the requests should be reserved only for extraordinary situations.

15. These disincentives are caused, in large part, by the fixed-fee contract structure used in a number of Idaho counties, under which contracting attorneys are paid a flat fee in exchange for their representation of indigent defendants, irrespective of the number of clients the attorney may be assigned during the term of the contract, or the nature of those clients' criminal charges. A recent county-by-county survey revealed that at least 19 Idaho counties continue to use a fixed-fee contract system to secure legal representation for indigent defendants, even though the Idaho Code expressly prohibits it. Such a system creates significant conflicts of interest by creating powerful incentives for the contracting attorney to spend as little time and money as possible on any given case—to the obvious detriment of indigent clients.

16. In addition, public-defender caseloads in counties across the state are significantly higher than the national standards, making it difficult, if not impossible, for attorneys to provide their clients with the zealous representation to which they are entitled. According to a December 2014 analysis conducted by Idaho's Legislative Services Office ("LSO"), in at least six Idaho counties, individual public defenders are responsible for handling more than twice the work that one attorney should ever take on. Individual public defenders in an additional 19 Idaho counties are responsible for handling the work of more than one attorney (but fewer than two).<sup>2</sup>

17. On information and belief, the current caseloads carried by public defenders in most Idaho counties are only slightly better, if not worse, than those highlighted in the National Legal Aid and Defender Association 2010 report ("NLADA Report") on Idaho's public-defense system. For instance, in Kootenai County, identified in the NLADA Report as one of the few

---

<sup>2</sup> Idaho Legislative Services Office - Report on 2013 Caseloads, *available at* [http://legislature.idaho.gov/sessioninfo/2014/interim/pdef1028\\_iso.pdf](http://legislature.idaho.gov/sessioninfo/2014/interim/pdef1028_iso.pdf).

bright spots with respect to public-defense services in Idaho, public defenders continue to work under crushing caseloads. In 2014, four of the office's 15 attorneys handled well over 400 cases each, the bulk of which were felonies and misdemeanors. Another four defenders handled over 300 cases in 2014, including a mixture of felonies, misdemeanors, juvenile cases, and other proceedings for which the Public Defender's Office is responsible. Such caseloads are well above national standards and impossible for one person to handle effectively.

18. The issues associated with the overwhelming caseloads of Idaho public defenders are made worse by the fact that at least 26 Idaho counties permit contract public defenders to maintain a private practice, often without tracking the number of private cases being handled by the contracting attorney at any given time. Most of those counties (22 of them) also rely on fixed-fee contracts. This creates an even greater economic incentive for public defenders to deprioritize their indigent clients in favor of their paying clients.

19. Further, many Idaho counties do not have the resources or expertise to provide the kind of specialized training or supervision to ensure that representation of indigent defendants is consistent with the State's constitutional mandates. According to a recent state-wide assessment by the Idaho State Public Defense Commission ("PDC"), "a significant number of indigent defense attorneys in the State are not receiving adequate training hours in areas directly relevant to the representation of their indigent clients."<sup>3</sup>

20. These deficiencies are further exacerbated by the lack of true independence afforded to public defenders across the state. Under the current supervisory structure, public defenders report to their respective county commissioners, many of whom are not attorneys or are otherwise unqualified to oversee a legal practice—let alone one requiring specialized knowledge

---

<sup>3</sup> Idaho State Public Defense Commission, 2015 Report to the Legislature, 9.

of criminal law. For example, in Bonner County, the commissioners hold degrees in History/Business Systems Management, Aeronautics, and Education, respectively. None has any formal legal training or practice experience. The same is true in Bingham County, where it appears that only two of the three commissioners attended college, and none has a background in the law. Yet in some counties, commissioners have extensive authority related to criminal-law matters, including the authority to approve or reject requests for additional resources, and to terminate or choose not to renew the public defender's contract, leaving the defenders beholden to the often-uninformed whims of their supervisors.

21. All of these deficiencies have combined to create a constitutional crisis with respect to indigent defense delivery in Idaho—a crisis that federal and state law require the State to address in a meaningful, expedient, and substantive way.

### **BACKGROUND**

22. The State of Idaho has a long history of recognizing the right to counsel for those criminal defendants who are unable to afford an attorney. As early as 1864, Idaho law required that a defendant “be informed by the court that it is his right to have counsel before being arraigned,” and that he “be asked if he desires the aid of counsel.”<sup>4</sup>

23. In 1887, the Idaho legislature went a step further, passing a law requiring trial courts to advise defendants of the right to counsel during arraignments on criminal charges, and to appoint counsel if the defendant requested an attorney but was unable to afford one.<sup>5</sup>

---

<sup>4</sup> Cr. Prac. 1864 § 267.

<sup>5</sup> See R.S., R.C., & C.L. § 7721 (1887); I.C. § 19-1512 (1967).

24. Once the appointment was made, defense counsel were to “be paid out of the county treasury, upon order of the judge of the court, such sum as the court may deem reasonable for the services rendered.”<sup>6</sup>

25. Following achievement of statehood in 1890, Idaho lawmakers included the right to counsel in the state constitution. Specifically, Article 1, Section 13 of the Idaho Constitution states that criminal defendants have a right to “appear and defend in person and with counsel.”

26. Since then, the Idaho judiciary has consistently interpreted this constitutional provision, as well as related statutes, as requiring the provision of counsel to indigent defendants at public expense.<sup>7</sup>

27. By the time the United States Supreme Court decided *Gideon v. Wainwright*<sup>8</sup> in 1963, some 37 states—including Idaho—had already committed to providing counsel for indigent defendants, upon request, in all felony cases. Indeed, then-Idaho Attorney General Frank Benson was one of 22 attorneys general to sign on to an amicus brief submitted to the U.S. Supreme Court in support of the plaintiff’s claims in *Gideon*.

28. After *Gideon*, the U.S. Supreme Court continued to expand the right to counsel in significant ways. The Court has extended the right to counsel to children in juvenile-delinquency proceedings, *see In re Gault*;<sup>9</sup> probationers in probation revocation proceedings, *see Mempa v. Rhay*;<sup>10</sup> and indigent defendants charged with misdemeanors, *see Argersinger v.*

---

<sup>6</sup> I.C. § 19-1513 (Repealed).

<sup>7</sup> *See State v. Montroy*, 217 P. 611, 614 (1923)

<sup>8</sup> 372 U.S. 335 (1963).

<sup>9</sup> 387 U.S. 1 (1967).

<sup>10</sup> 389 U.S. 128 (1967).

*Hamlin*.<sup>11</sup> More recently, the Court found that the right to counsel attaches for all defendants at their initial appearances, *see Rothgery v. Gillespie County, Tex.*;<sup>12</sup> and that plea bargaining constitutes a “critical stage” of any criminal proceeding, thereby requiring the effective assistance of counsel in connection with plea negotiations, *see Lafler v. Cooper*<sup>13</sup> and *Missouri v. Frye*.<sup>14</sup>

29. Idaho, on the other hand, has taken several steps backward in the half-century since *Gideon*. Rather than making good on its early efforts and serving as a model for other states to follow, the State of Idaho has failed to ensure—through lack of sufficient oversight, training, and funding—that people accused of crimes within its borders who are unable to afford an attorney are provided with constitutionally adequate legal assistance. As a result, Idaho has become the epitome of an indigent-defense system in crisis, notwithstanding the 2014 amendments to the public-defense statutes, which have done very little to address the underlying causes of the State’s indigent-defense problem.

***National Legal Aid and Defender Association Analysis of Idaho’s Indigent-Defense Services***

30. In its 2007 management audit of Idaho’s State Appellate Public Defender, the National Legal Aid and Defender Association (“NLADA”) concluded that the caseload problems plaguing Idaho’s appellate public defenders at that time could likely be addressed by improving trial-level indigent defense services across the state.

---

<sup>11</sup> 407 U.S. 25 (1972).

<sup>12</sup> 554 U.S. 191 (2008).

<sup>13</sup> 132 S. Ct. 1376 (2012).

<sup>14</sup> 132 S. Ct. 1399 (2012).

31. Following the release of the audit, the Idaho Criminal Justice Commission (“CJC”)—created by Executive Order in 2005—and composed primarily of various State officials involved in the criminal-justice system—authorized the NLADA to conduct a comprehensive study of the State’s trial-level indigent-defense system.

32. In January 2010, the NLADA released its evaluation of trial-level indigent-defense services in Idaho (“NLADA Report”). The Report included an assessment of services being provided to both adults and children in the criminal justice system, and focused specifically on seven counties.<sup>15</sup>

33. The NLADA’s assessment was rooted in the American Bar Association’s *Ten Principles of a Public Defense Delivery System*, promulgated in February 2002. According to the ABA, the *Ten Principles* are an interdependent set of standards that “constitute the fundamental criteria necessary to design a system that provides effective, efficient, high quality, ethical, conflict-free legal representation” to indigent defendants.<sup>16</sup>

34. The NLADA found that, for thousands of defendants across Idaho, the constitutional requirements of *Gideon* and its progeny have been left unfulfilled, and the standards set forth in the ABA’s *Ten Principles* have gone largely unmet.<sup>17</sup>

---

<sup>15</sup> The counties highlighted in the NLADA Report are Ada, Blaine, Bonneville, Canyon, Kootenai, Nez Perce, and Power Counties.

<sup>16</sup> ABA Ten Principles of a Public Defense Delivery System (Feb. 2002), at Introduction, available at [http://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/l\\_s\\_claid\\_def\\_tenprinciplesbooklet.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/l_s_claid_def_tenprinciplesbooklet.authcheckdam.pdf)

<sup>17</sup> NATIONAL LEGAL AID AND DEFENDER ASSOCIATION, THE GUARANTEE OF COUNSEL: ADVOCACY & DUE PROCESS IN IDAHO’S TRIAL COURTS: EVALUATION OF TRIAL-LEVEL INDIGENT DEFENSE SYSTEMS IN IDAHO 2–3 (2010).

35. The NLADA Report further asserts that, in direct contravention of the *Ten Principles*, the State has failed to ensure adequate training and supervision for public defenders, making it nearly impossible to assess whether public defenders are meeting the standards established by *Gideon* and its progeny.<sup>18</sup>

36. The State has foisted this essential function on each of its 44 counties without providing any monetary or supervisory support to the counties for trial-level public defense, aside from the limited funds allocated by the Public Defense Commission in 2014 to create additional, non-mandatory training opportunities for individual defenders who choose to take advantage of them. As the NLADA found, “[b]y delegating to each county the responsibility to provide counsel at the trial level without any state funding or oversight, Idaho has sewn a patchwork quilt of underfunded, inconsistent systems that vary greatly in defining who qualifies for services and in the level of competency of the services rendered.”<sup>19</sup> The 2014 amendments to the public-defense statutes failed to remedy this deficiency.

37. The NLADA identified a number of specific areas of concern with respect to trial-level indigent-defense services delivery in Idaho, many of which are still of concern today. These include the widespread use of fixed-fee contracts; extraordinarily high attorney caseloads and workloads; inadequate, and often nonexistent, investigation of cases; lack of structural safeguards to protect the independence of defenders; lack of adequate representation of children in juvenile and criminal court; lack of sufficient supervision; lack of performance-based

---

<sup>18</sup> *Id.* at 67–73.

<sup>19</sup> *Id.* at 2.



standards; lack of ongoing training and professional development; and lack of any meaningful funding from the State.<sup>20</sup>

### ***Recent Amendments to Idaho's Public-Defense Statutes***

38. In March 2014, despite several years of research and study by the Idaho Criminal Justice Commission and a legislative study committee, and in recognition of the need for reform, Idaho enacted only meager amendments to its public-defense statutes, found mainly at sections 19-848 through 19-866 of the Idaho Code.

39. The 2014 amendments (1) establish a public-defense commission, along with its powers and duties;<sup>21</sup> (2) clarify the duties of law-enforcement officers and/or the courts to notify criminal defendants of their right to counsel;<sup>22</sup> (3) identify the various methods by which counties are permitted to provide indigent-defense services;<sup>23</sup> and (4) encourage parity in compensation between public defenders and county prosecutors.<sup>24</sup>

40. Under the amended statutes, counties may provide indigent-defense services by either (1) establishing and maintaining an office of public defender; (2) joining with the board of county commissioners of one or more counties within the same judicial district to establish and maintain a joint office of public defender; (3) contracting with an existing office of public defender; or (4) contracting with a defending attorney, provided that the terms of the contract do not include any

---

<sup>20</sup> *Id.* at iii-viii; 3–9.

<sup>21</sup> I.C. §§ 19-849 (2014) and 19-850 (2014).

<sup>22</sup> I.C. § 19-853 (2014).

<sup>23</sup> I.C. § 19-859 (2014).

<sup>24</sup> I.C. § 19-860 (2014).

pricing structures that charge or pay a single fixed fee for the services and expenses of the attorney.<sup>25</sup>

41. Of Idaho's 44 counties, seven have established an office of public defender,<sup>26</sup> while just two have partnered to form a joint office of public defender.<sup>27</sup> One county neither maintains a public-defender office nor a contract for the provision of indigent-defense services, choosing instead to have the court appoint attorneys on an ad hoc basis, even though the 2014 amendments eliminated such a system from the list of acceptable options.<sup>28</sup> The remaining 34 counties provide indigent-defense services pursuant to a contractual agreement with a defending attorney or law firm, 19 of which operate under fixed-fee contracts.<sup>29</sup>

42. Under the amended statutes, a county must “annually appropriate enough money to administer the program of representation that it has elected under section 19-859, Idaho Code[,]” but the State is still not required to contribute any funding toward the provision of trial-level indigent-defense services.<sup>30</sup>

43. The PDC, established in 2014, is responsible for promulgating rules related to training and data-reporting requirements for defense attorneys across the state.<sup>31</sup>

---

<sup>25</sup> See I.C. § 19-859 (1)–(4).

<sup>26</sup> These are Ada, Bannock, Bonner, Bonneville, Canyon, Kootenai, and Twin Falls Counties.

<sup>27</sup> These are Minidoka and Cassia Counties.

<sup>28</sup> This is Washington County.

<sup>29</sup> See Idaho State Public Defense Commission, 2015 Report to the Legislature, 5–7.

<sup>30</sup> I.C. § 19-862(1) (2014).

<sup>31</sup> I.C. § 19-850(1)(b).

44. The PDC is further responsible for making recommendations to the Idaho legislature, including an initial round of recommendations that was due by January 20, 2015, regarding a number of issues, including core requirements for indigent-defense contracts, qualifications and experience standards for defending attorneys, enforcement mechanisms, and funding.<sup>32</sup> Yet, as of the date of this Complaint, the PDC has failed to make any such recommendations.

45. Despite the State's acknowledgement that significant reform is necessary in this arena—by, among other things, the creation of various virtually powerless committees, including the establishment in 2010 of a public-defense subcommittee of the Criminal Justice Commission, the establishment in 2013 of a special committee of the legislature to recommend legislative reforms to the public-defense system, and the 2014 statutory amendments and formation of the PDC—the State has done little to meaningfully address the myriad problems plaguing Idaho's indigent-defense system.

46. Critically, the State still does not provide any funding or supervision to any of the counties with respect to the delivery of indigent-defense services at the trial level.

47. Each county is still currently responsible for providing indigent-defense services to all criminal defendants within the county who are charged with misdemeanor or felony offenses and who are unable to afford an attorney. Yet, counties must do so without any meaningful funding, oversight, or training from the State.

48. Despite the PDC's responsibility to promulgate rules related to training and data-reporting requirements for defense attorneys across the state, no such rules have been promulgated to date.

---

<sup>32</sup> *Id.*

49. Despite the PDC's responsibility to make recommendations to the Idaho legislature regarding the core requirements for indigent-defense contracts, qualifications, and experience standards for defense attorneys, enforcement mechanisms, and funding, no such recommendations have been made to date.

50. Moreover, even if the PDC had promulgated certain rules or made specific recommendations, it has no authority to reprimand or sanction counties or individuals that do not abide by such rules or recommendations.

51. For instance, upon information and belief, at least 19 of the 34 Idaho counties that use a contract system currently operate under a fixed-fee pricing structure, despite express statutory prohibition against such contracts.

***Defendants' Ongoing Failure to Provide Indigent Defendants with Constitutionally Adequate Legal Representation***

52. In addition to the State's failure to meet the minimal requirements of the public-defense statutes, it has also failed to sufficiently address the many state and federal constitutional issues identified in the NLADA Report.

53. According to a recent study conducted by the Pre-Trial Justice subcommittee of the Criminal Justice Commission, only five of Idaho's 44 counties provide counsel to indigent defendants at their initial appearance before a judicial officer, in violation of Idaho law. Only one of the named Plaintiffs had counsel present at her initial appearance—and that counsel ultimately had a conflict of interest preventing counsel from representing her.

54. As a result of the State's failure to create and enforce a constitutionally consistent scheme that ensures representation for indigent defendants at initial appearances, many defendants, including the named Plaintiffs, are unable to effectively seek bond reduction or release from custody. As such, many defendants unnecessarily spend prolonged periods of time in pretrial

detention or feel coerced to plead guilty to charges against which they have a valid and potentially effective defense, merely to get out of jail and avoid losing a job or meaningful contact with their children and families.

55. Public-defender caseloads in counties across the state continue to exceed national standards, in some cases by more than double.<sup>33</sup>

56. As a result of their crushing caseloads and lack of support, Idaho public defenders do not have the time or resources to communicate with all of their clients consistently and effectively.

57. The State's failure to commit sufficient resources to indigent defense has also made it impossible for public defenders to investigate and otherwise prepare all of their cases thoroughly and effectively.

58. Moreover, the State does not provide public defenders with the specialized training and ongoing supervision necessary to ensure zealous and effective representation for indigent defendants.

59. In failing to remedy these deficiencies, the State has caused harm to the Plaintiffs, and those similarly situated, by constructively denying them their Sixth Amendment right to competent counsel and their Fourteenth Amendment right to due process.<sup>34</sup>

60. Pursuant to federal and state law, Plaintiffs, on behalf of themselves and a class of similarly situated individuals, seek declaratory and injunctive relief against Defendants to

---

<sup>33</sup> Idaho Legislative Services Office - Report on 2013 Caseloads, *available at* [http://legislature.idaho.gov/sessioninfo/2014/interim/pdef1028\\_iso.pdf](http://legislature.idaho.gov/sessioninfo/2014/interim/pdef1028_iso.pdf).

<sup>34</sup> *See United States v. Cronin*, 466 U.S. 648, 659 (1984).

remedy the rampant denial of constitutional rights to which Idaho's indigent defendants are subjected on a daily basis.<sup>35</sup>

### **JURISDICTION & VENUE**

61. This Court maintains original, subject-matter jurisdiction over this action under Section 1-705 of the Idaho Code.

62. Venue is proper in this Court pursuant to Section 5-402 of the Idaho Code because the State of Idaho is named as a defendant in this action, and Ada County encompasses the capital city of Boise. Additionally, the decisions that have caused the failures of Idaho's indigent-defense system were made in Ada County.

### **PARTIES**

#### **A. Plaintiffs**

##### ***Tracy Tucker***

63. Plaintiff TRACY DON TUCKER is and at all times pertinent herein has been a resident of Sandpoint, Idaho. Mr. Tucker was taken into custody on March 6, 2015, after he was charged with attempted strangulation and domestic battery in the presence of a child, exposing him to over 15 years in prison. Mr. Tucker was not represented by counsel at his initial appearance, during which the court set his bail at \$40,000. Mr. Tucker could not afford to post bail, and as a result, he remained in Bonner County Jail until June 2, 2015.

---

<sup>35</sup> Through this Complaint, Plaintiffs do not, at this time, challenge the components of Idaho's indigent-defense system served by the State Appellate Public Defender (*see* Sections 19-867 through 19-872 of the Idaho Code), which pertain primarily to felony criminal cases on appeal. Rather, this Complaint is focused on the State's failure to provide an adequate criminal-justice system for indigent defendants represented by overloaded and under-resourced defense attorneys at the trial level, and in misdemeanor and other appeals not handled by the State Appellate Public Defender.

64. Bonner County relies on contract attorneys, who are paid an annual fixed fee, to represent indigent criminal defendants being prosecuted within its jurisdiction.

65. Although Mr. Tucker was assigned a public defender prior to his next court appearance, his attorney did not appear on his behalf at his arraignment on March 18, 2015. Instead, his public defender sent a substitute attorney who had no prior knowledge of Mr. Tucker's case or even of the charges that Mr. Tucker faced. On information and belief, the substitute attorney failed to seek a bond reduction or otherwise advocate on Mr. Tucker's behalf.

66. Given the demands of his caseload, Mr. Tucker's attorney has met Mr. Tucker only on three occasions: once when his attorney came to Bonner County Jail and met with Mr. Tucker for approximately 10 minutes, and two additional times when he saw him in court. Mr. Tucker's attorney did not meet with him prior to either of those court proceedings—not even in the courtroom prior to the proceedings. Mr. Tucker has spoken with his public defender on the phone only on two occasions, both for approximately five minutes. Generally speaking, Mr. Tucker has also been unable to contact his attorney by phone. Between March 18, 2015, and June 1, 2015, Mr. Tucker attempted—unsuccessfully—to reach his attorney by phone on at least 50 occasions.

67. On information and belief, despite the fact that Mr. Tucker's trial was originally set for June 8, 2015, as of ten days prior to trial, his attorney had not had the chance to conduct any investigation into the case, contact or summon any witnesses, hire an investigator, review and explain the relevant discovery materials, or discuss trial strategy with Mr. Tucker. In total, on information and belief, Mr. Tucker has spent less than 20 minutes with his attorney throughout the course of his representation. Moreover, other than a bail reduction motion, Mr. Tucker's attorney never filed any motions on his behalf.

68. After remaining in jail for three months while unable to discuss a possible defense with his attorney, Mr. Tucker pleaded guilty to attempted strangulation on June 2, 2015. He is scheduled to be sentenced on August 3, 2015.

***Jason Sharp***

69. Plaintiff JASON MONROE SHARP is and at all times pertinent herein has been a resident of Kellogg, Idaho. Mr. Sharp was taken into custody on May 16, 2014, after he was charged with burglary and grand theft, exposing him to as much as 30 years in prison. Mr. Sharp was not represented by counsel at his initial appearance in court, during which his bail was set at \$50,000. Mr. Sharp could not afford to post bail, and as a result, he remained in the Shoshone County Jail for approximately two weeks.

70. On information and belief, Shoshone County relies on contract attorneys, who are paid an annual fixed fee, to represent indigent criminal defendants being prosecuted within its jurisdiction.

71. On information and belief, attorney caseloads in Shoshone County vastly exceed national standards and are among the heaviest of any county in Idaho.

72. Although Mr. Sharp was assigned a public defender at his initial appearance, he has had minimal contact with his attorney. Mr. Sharp had to advocate on his own behalf—without the assistance of his lawyer—in favor of a bond reduction. On information and belief, the court first agreed to reduce Mr. Sharp's bail to \$5,000, after Mr. Sharp explained that he was not on probation at the time of his arrest, as the court had previously believed. Then, after receiving a letter of support from Mr. Sharp's employer vouching for him and recommending his release, the court released Mr. Sharp on his own recognizance. Neither the bail reduction, nor the court's



ultimate decision to release Mr. Sharp, were the result of any efforts undertaken by his public defender.

73. Given the demands of his attorney's caseload, Mr. Sharp has only been able to meet with his attorney for approximately 90 minutes—total—throughout the 13 months during which his case has been pending. On information and belief, most of those meetings have occurred in or just outside the courtroom prior to a hearing. Mr. Sharp also has been unable to review the discovery in his case, despite repeated requests.

74. Although Mr. Sharp is scheduled to go to trial on July 14, 2015, and faces up to 30 years in prison if convicted, on information and belief, his attorney has not had the chance to conduct any investigation into the case, contact or summon any witnesses, hire an investigator, review and explain the relevant discovery materials, or discuss trial strategy with Mr. Sharp.

*Naomi Morley*

75. Plaintiff NAOMI HELEN MORLEY is and at all times pertinent herein has been a resident of Garden Valley, Idaho. Ms. Morley was taken into custody in March 2014, following a serious single car accident on an Ada County roadway.

76. Ada County relies on an institutional public-defender office to represent indigent criminal defendants being prosecuted within its jurisdiction. In the event that the public-defender office is unable to represent a defendant due to a conflict of interest, the County relies on conflict counsel to provide representation.

77. Although Ms. Morley was assigned a public defender at her initial appearance before the court, she had no opportunity to actually confer with the public defender at that initial proceeding, during which her bail was set at \$15,000. Ms. Morley could not afford to post bail, causing her to remain in jail for three weeks until her bail was reduced. It was later discovered

that the public defender's office could not represent Ms. Morley due to a conflict of interest. Conflict counsel was subsequently appointed.

78. Ms. Morley's attorneys—both her public defender and her conflict attorney—have been unable to adequately investigate the charges against her. Her current attorney has encouraged her to accept a plea deal that Ms. Morley understands would require her to spend 10 years in prison, despite her claims of innocence. When Ms. Morley inquired about the possibility of retaining an expert to dispute the findings of any blood sample analysis, she was told that, if she wanted to do so—or do any other outside testing to challenge the prosecution's allegations—she would have to pay for the testing herself. Given her indigent status, this is an expense that Ms. Morley cannot afford.

79. Moreover, Ms. Morley has attempted to discuss the case with her attorney several times, but has been unable to do so in any meaningful way. Although Ms. Morley told her attorney about a witness who would testify that the controlled substances allegedly found were the witness's and not Ms. Morley's, it was only through her own efforts that Ms. Morley was able to obtain a signed affidavit from the witness, who acknowledged, under oath, that any controlled substances allegedly found belonged to the witness. Furthermore, when Ms. Morley tried to discuss certain discrepancies in the police report, her attorney was apparently so overloaded with cases that he did not have the time to engage with her, and her concerns went unheeded. On information and belief, had her attorney had a manageable caseload and thus the time to discuss the facts of her case, as well as her medical history, in greater detail, he would have recognized immediately that she had a valid defense that required thorough investigation. Ms. Morley is scheduled to go to trial on June 29, 2015.

*Jeremy Payne*

80. Plaintiff JEREMY MICHAEL PAYNE is and at all times pertinent herein has been a resident of Payette, Idaho. Mr. Payne was taken into custody on January 25, 2015, after he was charged with driving without a license, as well as possession of a controlled substance and drug paraphernalia, exposing him to over seven years in prison. Mr. Payne was not represented at his initial appearance in court, during which his bail was set at \$30,000. Mr. Payne could not afford to post bail, and as a result, he was remanded to the Payette County Jail, where he remained until being released on June 9, 2015, when the State postponed his trial date for the third time.

81. Payette County relies on contract attorneys, who are paid an annual fixed fee, to represent indigent criminal defendants being prosecuted within its jurisdiction.

82. Although Mr. Payne was assigned a public defender at his initial appearance, he did not have any contact with his attorney until the minutes leading up to his next court appearance on February 6, 2015. In the months that followed, Mr. Payne went before the court three more times and again met briefly with his attorney either in court just prior to the proceedings, or in jail the day before the court appearance. Given the demands of his caseload, Mr. Payne's attorney only met with him at the Payette County Jail on three occasions. Mr. Payne has also been unable to contact his attorney by phone. During the two-week period between May 12 and May 26, Mr. Payne left at least six phone messages for his attorney, none of which were returned.

83. At Mr. Payne's pretrial hearing on April 17, 2015, his attorney informed him that in order to move forward with his jury trial in June 2015, he would have to waive his right to a speedy trial. However, his attorney failed to adequately explain the consequences of the waiver, and the

fact that Mr. Payne's refusal to waive his speedy trial right could result in his release from custody.

84. On information and belief, despite that Mr. Payne's trial has now been rescheduled three times, Mr. Payne's attorney has not had the chance to conduct any investigation into the case, nor has the attorney reviewed and explained the relevant discovery materials or discussed trial strategy with Mr. Payne. In total, Mr. Payne has only spent approximately 30–45 minutes with his attorney throughout the course of his representation.

#### **B. Defendants**

85. Defendant STATE OF IDAHO has violated and continues to violate the Idaho and federal constitutions, which require it to ensure that adequate indigent-defense services are provided to Idaho's poorest citizens. The State Capital and center of State government is in Ada County.

86. Defendant C.L. "BUTCH" OTTER is the Governor of the state of Idaho and is subject to this lawsuit in his official capacity as to all claims herein. As the chief executive of the state, Governor Otter bears ultimate responsibility for the provision of constitutionally mandated services to the people of Idaho. In 2005, the CJC was created by Executive Order and tasked with addressing "important criminal justice issues and challenges." Governor Otter maintains supervisory authority over the CJC.

87. Defendants Hon. Molly Huskey, Darrell G. Bolz, Sara B. Thomas, William H. Wellman, Kimber Ricks, Sen. Chuck Winder, and Rep. Christy Perry are all of the members Idaho's Public Defense Commission. They are subject to this lawsuit in their official capacities as members of the Commission. The Commission is responsible for promulgating rules related to training and data-reporting requirements for defense attorneys across the state, and making recommendations

to the legislature regarding core requirements for indigent-defense contracts, qualifications, and experience standards for defending attorneys, enforcement mechanisms, and funding.

### **CLASS ACTION ALLEGATIONS**

88. Plaintiffs bring this class action lawsuit pursuant to Idaho Rule of Civil Procedure 23 on behalf of all indigent persons who are now or who will be under formal charge before a state court in Idaho of having committed any offense, the penalty for which includes the possibility of confinement, incarceration, imprisonment, or detention in a correction facility (regardless of whether actually imposed) and who are unable to provide for the full payment of an attorney and all other necessary expenses of representation in defending against the charge.

89. The Plaintiffs in this case represent a class (the “Class”), and this action should be certified as a class action under Idaho Rule of Civil Procedure 23.

90. Every day, hundreds, if not thousands, of individuals who are unable to afford an attorney and who depend on the State of Idaho to provide them with effective legal representation are criminally prosecuted in Idaho.<sup>36</sup> As such, the Class is so numerous that joinder of all members is impractical.

91. There are important questions of law and fact raised in this case that are common to the Class, including:

- a. Whether the State is required under the United States and Idaho Constitutions, and under Idaho law, to provide indigent defendants with effective legal representation, including at the time of initial appearance;
- b. Whether the State is currently providing constitutionally sufficient representation for indigent defendants in their respective jurisdictions;

---

<sup>36</sup> Idaho Legislative Services Office – CFY 2014 Budget & Policy Analysis, Figure 3.0, available at [http://legislature.idaho.gov/sessioninfo/2014/interim/pdef1028\\_hoskins.pdf](http://legislature.idaho.gov/sessioninfo/2014/interim/pdef1028_hoskins.pdf).

- c. Whether the State has violated the United States and Idaho Constitutions by failing to implement, administer, and oversee adequate public-defense systems;
- d. Whether, by abdicating its responsibility to fund, supervise, and administer indigent defense services to the counties, the State has failed to ensure that indigent defendants are provided with effective legal representation, all in violation of the United States and Idaho Constitutions;
- e. Whether the State's failure to adequately fund and supervise the delivery of indigent-defense services impedes the provision of effective legal representation to indigent defendants; and
- f. Whether the State's failure to develop uniform workload and performance standards for public-defense attorneys in Idaho impedes the provision of effective legal representation to indigent defendants.

92. The claims of the Class representatives are typical of the claims of the Class as a whole. Like all of the Class members, the Class representatives are being denied their right to counsel, in violation of the Sixth Amendment to the U.S. Constitution and Article 1, Section 13, of the Idaho Constitution, as a direct result of State's ongoing failure to adequately fund, supervise, and administer indigent-defense services in Idaho.

93. The Class representatives will fairly and adequately protect the interests of the Class. The interests of the Class representatives are not in conflict with the interests of any other indigent defendant, and the Class representatives have every incentive to pursue this litigation vigorously on behalf of themselves and the Class as a whole. Moreover, the Class representatives are being represented by experienced, well-resourced counsel in this matter, including the American Civil Liberties Union of Idaho, the national American Civil Liberties

Union's Criminal Law Reform Project, and the law firm of Hogan Lovells US LLP, whose attorneys possess substantial expertise in prosecuting class action lawsuits generally, and in indigent-defense reform litigation in particular.

94. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct, exacerbating the differing and inadequate public-defender programs currently in place in various counties in the State. Such a risk is of particular concern in this case since the lack of uniform performance standards is central to the Plaintiffs' allegations.

95. The common questions of law and fact articulated above predominate over any case-specific questions that may arise out of any of the individual Class members' criminal cases. As such, a class action is superior to other available methods for the fair and efficient adjudication of this matter.

96. Defendants have failed to adequately fund, supervise, and administer indigent- defense services in Idaho, thereby violating the rights of poor defendants across the state. As such, these Defendants have acted and refused to act on grounds generally applicable to the entire Class, thereby making it appropriate for this Court to issue final injunctive and declaratory relief for all Class members.

### **FACTUAL ALLEGATIONS**

#### ***Overview of the Current State of Indigent-Defense in Idaho***

97. The State of Idaho leaves the responsibility for providing trial-level legal representation to indigent criminal defendants to each of its 44 counties.

98. Yet the State does not provide any funding, training, or supervision to support the delivery of indigent-defense services at the trial level.

99. According to the NLADA Report, as well as the more recent county-by-county surveys conducted by the Idaho Criminal Justice Commission and the ACLU, respectively, no county in Idaho is currently providing indigent-defense services that meet state or federal legal standards.

100. State officials themselves have recognized the current constitutional crisis regarding indigent defense services in Idaho. In August 2013, the Chief Justice of the Idaho Supreme Court noted that “our system for the defense of indigents, as required by Idaho’s constitution and laws, is broken.” And Governor Otter acknowledged in his 2015 State of the State address that, despite the 2014 amendments to Idaho’s public defense statutes, “our current method of providing legal counsel for indigent criminal defendants does not pass constitutional muster.”

101. These constitutional and statutory deficiencies manifest themselves in myriad ways, including (1) failure to provide counsel to indigent defendants at their initial appearance; (2) extended and unnecessary pretrial detention; (3) excessive caseloads that far exceed national standards; (4) lack of sufficient investigation; (5) lack of sufficient expert analysis and testimony; (6) lack of consistent, effective, and confidential communication between indigent defendants and public defenders; (7) continued use of fixed-fee contracts for attorneys providing indigent-defense services; (8) lack of public-defender independence; (9) lack of sufficient training in the field of criminal defense; (10) lack of informed and consistent oversight of the provision of indigent-defense services throughout the State; and (11) lack of sufficient supervision and evaluation.



102. Each of these deficiencies is directly linked to the State's longstanding and on-going failure to provide the funding, supervision, and training necessary to meet its legal obligations in the area of indigent defense.

***Lack of Representation at Initial Appearance***

103. Under Idaho law, “[e]very defendant, who according to law is entitled to appointed counsel, shall have counsel assigned to represent the defendant, from initial appearance before the magistrate or district court, unless the defendant waives such appointment.”<sup>37</sup>

104. Section 19-852 of the Idaho Code guarantees that an indigent person “under formal charge of having committed, or [] being detained under a conviction of a serious crime . . . is entitled to be represented by an attorney.”<sup>38</sup>

105. Section 19-851(d) defines “serious crime” as “any offense the penalty for which includes the possibility of confinement, incarceration, imprisonment or detention in a correctional facility, regardless of whether actually imposed.”<sup>39</sup>

106. An initial appearance is defined by Idaho Criminal Rule 5(a) as “the first appearance of the defendant before any magistrate,” during which the judge or magistrate may, among other things, set bail and take a plea from the defendant.<sup>40</sup>

---

<sup>37</sup> I.C.R. 44(a).

<sup>38</sup> I.C. § 19-852.

<sup>39</sup> I.C. § 19-851(d).

<sup>40</sup> See I.C.R. 5(a)

107. In 2014, the Pre-Trial Justice subcommittee of the CJC conducted a survey of all 44 Idaho counties to determine, among other things, the number of counties that provide counsel for indigent defendants at their initial appearance before a judge or magistrate.

108. According to the CJC survey, only five Idaho counties provide counsel for indigent defendants at their initial appearances, despite the critical nature of such proceedings.

109. None of the named Plaintiffs was represented by counsel at his or her initial appearance.

110. Plaintiff Tucker was not represented by counsel at his initial appearance, even though he was charged with a serious felony and had his bail set at \$40,000. Because he could not afford to pay his bail and had no attorney available to argue for a bond reduction on his behalf, Mr. Tucker remained in jail for three months before pleading guilty.

111. Plaintiff Sharp was not represented by counsel at his initial appearance, even though he was charged with two serious felonies and had his bail set at \$50,000. Because he could not afford to pay his bail and had no attorney available to argue for a bond reduction on his behalf, Mr. Sharp remained in jail for two weeks until he was able to convince the court—without the assistance of his attorney—to reduce his bond.

112. An attorney from the Ada County Public Defender's office was present during Plaintiff Morley's initial appearance, but Ms. Morley did not have an opportunity to discuss her case with counsel at that time, and that office soon after determined that it had a conflict of interest and could not represent Ms. Morley. Ms. Morley's bail was set at \$15,000 at her initial appearance. Because she could not afford to pay his bail and had no attorney available to argue for a bond reduction on her behalf, she remained in custody for three weeks until her bail was reduced.

113. Plaintiff Payne was not represented by counsel at his initial appearance, even though the proceeding included the court's decision to set Mr. Payne's bail at \$30,000. He could not afford to pay his bail and had no attorney available to argue for a bond reduction on his behalf. Mr. Payne remained in jail until June 9, 2015, when the state asked the court to postpone Mr. Payne's trial for a third time.

114. On information and belief, criminal defendants in Bingham County routinely enter pleas at their initial appearances without having had the opportunity to consult with an attorney. Indeed, at initial appearances held on May 28, 2015, defendants were asked to enter a plea to the charges against them without counsel present and without having affirmatively waived their right to counsel or even having been informed by the judge of their right to counsel. More than half pleaded guilty and were sentenced without counsel present.

***Unnecessary and/or Extended Pre-Trial Detention***

115. Due in part to the lack of legal advocacy available to indigent defendants at their initial appearances, bail is often set at unnecessarily high amounts that low-income defendants cannot afford. For instance, Plaintiff Sharp's bail was originally set at \$50,000, without any discussion between the court and Mr. Sharp regarding his ability to pay, employment status, or other relevant factors, including the fact that Mr. Sharp was not on probation when he was arrested, as the court originally believed. It was not until two weeks later that the court agreed to reduce Plaintiff's bond, after Mr. Sharp was able to explain to the court that he was not on probation at the time of his arrest and to have his employer write a letter to the court in support of his request for pretrial release.

116. The attendant consequences for spending time in jail are severe. According to research studies conducted or cited by the U.S. Department of Justice's Bureau of Justice

Assistance and the Arnold Foundation, among others, whether or not a criminal defendant is held in pretrial custody can have a tremendous impact on the outcome of the case. For instance, in its review of outcomes for more than 150,000 defendants in Kentucky during 2009–2010, the Arnold Foundation determined that “[w]hen other relevant statistical controls are considered, defendants detained until trial or case disposition are 4.44 times more likely to be sentenced to jail and 3.32 times more likely to be sentenced to prison than defendants who are released at some point pending trial.”<sup>41</sup> Similarly, in New York City, “the citywide conviction rate for cases with no pretrial release was 92%. By contrast, the conviction rate for cases in which the defendant was at liberty from arraignment to disposition was 50%.”<sup>42</sup>

117. Aside from the impact pre-trial detention can have on the defendant’s criminal case, it can also significantly affect a defendant’s employment or other obligations that he/she is unable to fulfill while in custody. For instance, prior to Plaintiff Tucker’s arrest, he received a traffic ticket, which he intended to pay prior to the due date. Following his arrest, however, Mr. Tucker was unable to afford bail and remained in pretrial detention for over three months. Consequently, Mr. Tucker failed to resolve his traffic ticket on time and had his driver’s license suspended while he was in custody. If it were not for his employer’s uncommon willingness to write to the court on his behalf, Plaintiff Sharp likely would have remained in jail pending trial and lost his job as a result. And Plaintiff Morley remained in jail for two weeks prior to posting bond, despite suffering from severe injuries in connection with a serious car accident that occurred on the day of her arrest.

---

<sup>41</sup> Christopher T. Lowenkamp et al., Laura and John Arnold Foundation, *Investigating the Impact of Pretrial Detention on Sentencing Outcomes* 10 (Nov. 2013).

<sup>42</sup> Mary Phillips, N.Y.C. Crim. Just. Agency, *Pretrial Detention and Case Outcomes* 32 (Nov. 2007).

118. Pre-trial detention can also serve as an inappropriate incentive to obtain a guilty plea in exchange for release from jail. Such an incentive can and has been used even if a defendant has not yet spoken to a lawyer and notwithstanding the person's innocence or the availability of viable defenses to challenge the State's case. As noted above, Plaintiff Tucker, who spent three months in jail proclaiming his innocence and hoping—in vain—for a thorough investigation of his case, recently pleaded guilty after being told that he would be released from custody pending his sentencing.

### *Excessive Caseloads and Workloads*

119. In 1973, under the direction of the U.S. Department of Justice, the National Advisory Commission on Criminal Justice Standards and Goals developed national caseload standards for the first time. According to NAC Standard 13.12: “The caseload of a public defender attorney should not exceed the following: felonies per attorney per year: not more than 150; misdemeanors (excluding traffic) per attorney per year: not more than 400; juvenile court cases per attorney per year: not more than 200; Mental Health Act cases per attorney per year: not more than 200; and appeals per attorney per year: not more than 25.”<sup>43</sup>

---

<sup>43</sup> It should be noted that, in recent years, experts in the field have suggested that the NAC standards are outdated and fail to account for the added complexities that have been infused into criminal defense practice over the last 40 years, including the introduction of sexually violent offender commitment proceedings, persistent offender or “three-strikes” statutes, significant collateral consequences resulting from convictions, and a growing recognition of the unique nature of juvenile defense. As such, commentators have argued that the NAC standards are themselves too high. *See* Norman Lefstein, *Securing Reasonable Caseloads: Ethics and Law in Public Defense* 43–48 (2011).

120. The NAC standards do not contemplate a mixed caseload. In other words, an attorney who handles felony cases should carry no more than 150 such cases during the course of a year, and nothing else.<sup>44</sup>

121. In August 2009, the American Bar Association released its “Eight Guidelines of Public Defense Related to Excessive Workloads” (“Guidelines”) in an effort to set forth a “detailed action plan . . . to which those providing public defense should adhere as they seek to comply with their professional responsibilities.”<sup>45</sup> Among other things, the Guidelines include assessment of “whether excessive workloads are preventing [public defenders] from fulfilling performance obligations”; supervision and monitoring of workloads; training with regard to an attorney’s ethical duties in the face of excessive workloads; and the need for those managing the public defense system to determine whether excessive workloads exist.<sup>46</sup>

122. Due in part to these excessive caseloads, and the resulting lack of time and resources available to public defenders, Plaintiffs were not represented at their initial appearances, were unable to communicate effectively with their attorneys on a consistent basis, and did not have their cases adequately investigated (if at all), or otherwise prepared in advance of trial. Moreover, as a result of their heavy caseloads, the public defenders representing Plaintiffs did not have the time or support necessary to file appropriate pretrial motions with the court.

---

<sup>44</sup> “The standards are disjunctive, so if a public defender is assigned cases from more than one category, the percentage of the maximum caseload in each should be assessed and the combined total should not exceed 100%.” Justice Denied, Chapter 2, at 66 n. 102 (citing National Advisory Commission on Criminal Justice Standards and Goals: Courts 276 (1973)).

<sup>45</sup> ABA Eight Guidelines of Public Defense Related to Excessive Workloads, 1.

<sup>46</sup> *Id.*

123. Based on recent court observations, public defenders in Kootenai, Nez Perce, Payette, Bannock, and Bonneville counties, among others, have so many cases assigned to them that they are unable to even identify their clients until minutes before the defendants' court appearances.

124. Moreover, excessive caseloads can negatively impact the relationships between attorneys and their clients. During court proceedings in Bonneville County on May 28, 2015, for instance, one defendant met with his lawyer in open court, just next to and within hearing distance of prosecutors, the judge, court personnel, other defendants, and members of the public attending court. On information and belief, after a heated exchange between the defendant and his attorney—which could be overheard throughout the courtroom—the public defender stated that she had “too many cases” and as a result, could not “deal with this right now.” On information and belief, the defendant then indicated that he wished to “fire” his attorney and represent himself instead. As a result of trying to speak with his lawyer to understand his case, the defendant's own attorney then summoned the marshal to escort the defendant out of the courtroom.

***Lack of Effective or Consistent Attorney-Client Communication***

125. In many instances, indigent defendants in Idaho have insufficient access to their assigned public defenders and are unable to communicate with their attorneys for weeks or months at a time, due in large part to the extremely heavy caseloads public defenders are forced to handle, the lack of sufficient support staff to help attorneys manage their contacts and relationships with their clients, and the fixed-fee contracts used in many counties, which provide economic incentives to spend as little time as possible on any individual case. This lack of communication makes it virtually impossible for indigent defendants, including the named

Plaintiffs, to understand developments in their case or to assist in their own defense in any meaningful way.

126. Because of public defenders' heavy caseloads, lack of support, and contractual obligations, and the resulting lack of consistent communication between them and their clients, many indigent defendants, including those who are not in custody, are unable to access the discovery materials in their cases. Indeed, Plaintiffs Payne, Tucker, and Sharp all have been unable to access the discovery materials in their cases.

127. Because Idaho's public defenders are overextended and lack sufficient resources, they often fail to receive or follow up on suggestions made by the defendant or the defendant's family with regard to possible witnesses, alibis, or other potentially exculpatory evidence. For instance, Plaintiff Morley urged her public defender to obtain a statement from a witness who could provide exculpatory testimony to prove Morley's innocence. No such statement was obtained by her attorney. As a result of Ms. Morley's own efforts, however, she recently received a signed affidavit from the witness, confessing responsibility for the alleged crimes and apologizing for the harm that she has caused Ms. Morley.

128. As illustrated by the named Plaintiffs' experiences, when indigent defendants—particularly those in custody—do get the opportunity to speak with their attorneys, the meetings are usually very short and often take place in open court or other areas of the courthouse that lack the privacy necessary for truly confidential and privileged discussions. This kind of interaction makes it difficult to establish a meaningful attorney-client relationship in which defendants can ask questions and gain a clear understanding of what is happening in their case and in which public defenders can answer their clients' questions thoroughly and gather all the information they need to advocate effectively.



129. Plaintiffs Payne and Tucker, both of whom spent substantial time in pretrial detention before being recently released, tried to contact their public defenders repeatedly while in custody but received no response. Each also alleges that he met with his attorney for a total of less than an hour since he was arrested.

130. While they are not currently in custody, Plaintiffs Sharp and Morley allege that they are unable to communicate effectively with their attorneys. Specifically, both indicate that their questions and suggestions go routinely unanswered by their attorneys; and that they are unclear about developments in their cases, or the implications of such developments.

***Lack of Investigation and Expert Analysis and Testimony***

131. In counties across the state, having a publicly funded investigator or expert assigned to a case is a luxury that is most often reserved for indigent defendants charged with particularly serious felonies.

132. Of the 34 counties that use a contract-defender model, the vast majority do not increase the amount of the contract to account for the cost of investigators and experts. Rather, contract attorneys must make special requests to the court or the local county's board of commissioners, on a case-by-case basis, to obtain the resources necessary to retain an investigator or expert.

133. On information and belief, public defenders often choose not to make such requests at all, given the very limited funds available to meet them. Indeed, Plaintiff Morley has been told that if she wanted to have an expert analyze the drug evidence in her case and be prepared to testify at trial, she would have to pay for it herself. Ms. Morley is unable to pay for the expert on her own, and therefore could be prevented from having expert testimony to aid in her defense.

134. On information and belief, all of the Plaintiffs' appointed lawyers have been unable to investigate Plaintiffs' cases in any meaningful way, making it difficult to prepare defenses likely to succeed at trial—or in the context of plea negotiations, for that matter.

*Use of Fixed-Fee Contracts*

135. There are currently at least 19 Idaho counties utilizing a fixed-fee contract system, notwithstanding the fact that such contracts are prohibited by statute.

136. For instance, in Payette County, the current public-defense contract provides that the County will pay the contracting attorney \$560 for each "Public Day" that the attorney works. A Public Day is defined in the contract as "any day in which CONTRACTOR must appear in Court for a client he is appointed to under this Agreement, or any day in which CONTRACTOR works for 5 or more hours on clients he is appointed to under this Agreement." While the contract goes on to state that "[t]here is not a limit to the number of days that CONTRACTOR may use as Public Days in any given month," the fixed daily rate creates a disincentive to spend any extended amount of time in court, or to spend more than the minimum five hours working on indigent-defense cases. This is especially problematic given that the public defense contractors in Payette County are still permitted to maintain a separate private practice. Moreover, the contract states explicitly that it "does not include any costs of transcripts, or any expenses of trial, investigation or appeal for which the Court may approve expenditures." In order to access any additional funds, the contractor must first obtain "advance approval for such expenses from the district judge or magistrate having jurisdiction over the case."

137. Upon information and belief, the 2010–2011 public-defense contract in Gem County, which is the most recent contract to be made publically available by the County, provides that the County "shall pay the sum of One Hundred Eighty Thousand Dollars

(\$180,000) for Public Defense services” during the contract period, and that that sum is to be paid in twelve installments of \$15,000 each. In the event that an indigent defendant in Gem County is charged with a “special-circumstance offense” (i.e. murder), the contracting attorney must negotiate with the County for certain “extraordinary expenses,” such as “psychological evaluation and expert testimony, ballistics and forensic scientific testing and expert testimony, change of venue expenses, and conflict-of-interest attorneys.” It appears that, for all other alleged crimes, such expenses would have to be taken out of the fixed \$180,000 fee, along with all expenses associated with salaries, insurance, equipment, and office space.

138. The fixed-fee contract system in Gem County may also explain a disturbing occurrence during court proceedings held on May 27, 2015, during which the public defender appeared to ignore a clear conflict of interest. The case in question involved co-defendants—one adult, one juvenile—charged with various drug crimes. While the two defendants were represented by different attorneys, upon information and belief, both lawyers work in the office of the contracting attorney. This was particularly noteworthy since one of the defendants had already pleaded guilty, while the other considered whether or not to do the same. Indeed, at various points during the proceeding, both defendants and both attorneys were present in the courtroom while their individual circumstances were discussed. Since the Gem County contract—like most other fixed-fee contracts in Idaho—requires the public defender to pay for conflict counsel out of the lump sum payment they receive from the county, there is a powerful disincentive to ignore or attempt to work around clear conflicts of interest.

139. In Custer County, the current public-defender contract states that the contracting attorney shall receive an annual sum of \$50,000 for services rendered, and an additional \$65.00 per hour for any time spent on indigent defense cases exceeding 50 hours in any given month.

However, upon information and belief, the current Custer County public defender is based in Blackfoot, Idaho, approximately two hours from the county seat in Challis. Nevertheless, the contract states that “the Attorney shall not charge Custer County for the travel expenses.”

140. Fixed-fee contracts create a serious conflict of interest for defending attorneys because they encourage the attorney to spend as little money and time as possible on each case in order to maximize the amount of money and time that can be used to cover other cases, and other expenses, including compensation for the contracting attorney and any staff to assist with representation.

141. To make matters worse, upon information and belief, at least 26 of the 34 counties operating on a contract system permit public defenders to maintain a private legal practice. Indeed, the Franklin County public defense contract states explicitly that “[a]ttorneys providing services under this Agreement may undertake representation of person charged with a crime in this or any other jurisdiction for a fee.”

142. Plaintiff Payne was arrested and charged in Payette County and was assigned a public defender. Due, in part, to the fixed-fee contract in effect in Payette County, the contracting attorney who represented Plaintiff Payne had limited incentive to spend the money and time necessary to locate and interview witnesses, secure expert testimony, or otherwise explore ways of challenging the criminal charges at issue. Indeed, the defender had substantial incentive *not* to engage in any defense activity or strategy that is not absolutely required.

### *Lack of Independence*

143. The first of the American Bar Association's ("ABA") *Ten Principles* is to ensure that "the public defense function, including the selection, funding, and payment of defense counsel, is independent."<sup>47</sup>

144. In many counties, the local board of commissioners retains the authority to hire and fire the public defender at will, even though few, if any, of the commissioners has any experience working as attorneys, let alone supervising attorneys.

145. The board of commissioners also typically controls the amount of funding that will be extended to the public defender, and in some cases, will make the final decision as to whether a request for an investigator or expert will be approved.

146. Upon information and belief, at least 17 counties require public defenders to request additional resources from either the court or the county commissioners to pay for an investigator or an expert in a given case.

147. Upon information and belief, at least 10 counties require public defenders to request additional resources from either the court or the county commissioners to pay for laboratory testing.

148. Given the vast authority that boards of county commissioners maintain over public defenders and the day-to-day operations of the public-defender office, there is a real fear of retribution among public defenders. On information and belief, public defenders working in institutional offices, as well as those working under contract, are concerned that they will lose their jobs or contracts, or be otherwise disciplined, if they run afoul of the commissioners'

---

<sup>47</sup> ABA Ten Principles of A Public Defense Delivery System no. 1, *available at* [http://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/lis\\_claid\\_def\\_tenprinciplesbooklet.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/lis_claid_def_tenprinciplesbooklet.authcheckdam.pdf).

expectations. As a result, many of Idaho's public defenders are beholden to their commissioners and therefore lack the independence necessary to do their jobs effectively.

149. Indeed, Defendant Otter recently approved, and the State of Idaho enacted, changes to Idaho's indigent-defense statutes that removed a two-year-minimum term requirement for public defenders in institutional offices. Removing the two-year-minimum term requirement severely undercuts any independence those public defenders might hope to have, as it leaves them vulnerable at any time to termination for no reason or for unjustified reasons. The removal of the minimum term requirement was done over the expressed objection of public defenders.

150. The State's failure to set standards regarding the commissioners' ability to hire and fire public defenders without justification results in, among other things, less zealous advocacy on the part of the defending attorneys, including a reticence to seek supplemental funding for investigators, experts, or other necessary resources.

***Lack of Sufficient Supervision and Evaluation***

151. While independence is essential, the last of the ABA *Ten Principles* also requires that public defenders be "supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards." ABA *Ten Principles*, no. 10.

152. The State currently plays no role whatsoever—either by way of directly supervising or setting guiding principles regarding the same—in supervising or evaluating the work done by public-defense offices and contractors in the various counties.

153. The limited supervision that does exist is often deficient since it is carried out by local county commissioners with little or no experience overseeing the work of an attorney.

154. Moreover, because the State has not established uniform performance standards, there is very little reliable data available for managers to evaluate the work of the attorneys they oversee, whether it be related to overall workloads, the extent and nature of client contact, motion practice, adequacy of investigation, or level of preparation for hearings and trials.

***Harm to Plaintiffs***

155. All of the above-mentioned issues have combined to cause tremendous harm to Plaintiffs and to the Class as a whole.

***Plaintiff Tracy Tucker***

156. Plaintiff Tracy Tucker was not represented by counsel at his initial appearance, resulting in his inability to make any arguments as to the amount of his bail, which was ultimately set by the court at \$40,000. Because he was not able to afford bail, Mr. Tucker remained in jail for three months pending the resolution of his case. Throughout the duration of his case, Mr. Tucker has been unable to communicate effectively or consistently with his public defender, making it virtually impossible for him to participate in the development of his defense. In addition, Mr. Tucker's attorney was unable to conduct any meaningful investigation into his case, review the relevant discovery with his client, or share with Mr. Tucker his thoughts with regard to trial strategy and related matters. Mr. Tucker ultimately pleaded guilty after spending three months in jail. He is scheduled for sentencing on August 3, 2015.

***Plaintiff Jason Sharp***

157. Plaintiff Jason Sharp was not represented by counsel at his initial appearance, resulting in his inability to make any arguments as to the amount of his bail, which was originally set by the court at \$50,000. Since Mr. Sharp could not afford to post bail, he remained in the Shoshone County Jail for approximately two weeks until, without the help of his lawyer,

Mr. Sharp was able to convince the court that his bail amount was inappropriate given the circumstances of his case. He was subsequently released pending trial. Throughout the duration of his case, however, Mr. Sharp has been unable to communicate effectively or consistently with his public defender, making it virtually impossible for him to participate in the development of his defense. In addition, Mr. Sharp's attorney was unable to conduct any meaningful investigation into his case, review the relevant discovery with his client, or share with Mr. Sharp his thoughts with regard to trial strategy and related matters. Mr. Sharp is scheduled to go to trial on July 14, 2015, and faces up to 30 years in prison if convicted on both counts.

*Plaintiff Naomi Morley*

158. Although counsel from the Ada County Public Defender's office was present with Plaintiff Naomi Morley at her initial appearance, Ms. Morley had no opportunity to consult with that lawyer at that time, resulting in her inability to make any arguments as to the amount of her bail, which was ultimately set by the court at \$15,000. In any event, that office soon after determined it could not represent Ms. Morley due to a conflict of interest. Because she was not able to afford bail, Ms. Morley remained in jail for two weeks before having her bail reduced and posting bond—all while recovering from serious injuries sustained in a car accident on the day of her arrest. Throughout the duration of her case, Ms. Morley has been unable to communicate effectively or consistently with her public defender, making it virtually impossible for her to participate, in any meaningful way, in the development of her defense. In addition, Ms. Morley's attorney has been unable to conduct any meaningful investigation into her case, review the relevant discovery with his client, or share with Ms. Morley his thoughts with regard to trial strategy and related matters. Ms. Morley is scheduled to go to trial on June 29, 2015, and faces more than 15 years in prison if convicted.



Plaintiff Jeremy Payne

159. Plaintiff Jeremy Payne was not represented by counsel at his initial appearance, resulting in his inability to make any arguments as to the amount of his bail, which was ultimately set by the court at \$30,000. Because he was not able to afford bail, Mr. Payne has remained in jail pending resolution of his case. Throughout the duration of his case, Mr. Payne has been unable to communicate effectively or consistently with his public defender, making it virtually impossible for him to participate, in any meaningful way, in the development of his defense. In addition, Mr. Payne's attorney has been unable to conduct any meaningful investigation into his case, review the relevant discovery with his client, or share with Mr. Payne his thoughts with regard to trial strategy and related matters. Mr. Payne is scheduled to go to trial on July 21, 2015, and faces up to seven years in prison if convicted.

160. The State of Idaho has not provided Plaintiffs, or those similarly situated, with the representation to which they are constitutionally and otherwise legally entitled. They have not been provided with adequate representation at every critical stage; have not had sufficient opportunity to discuss their cases with their attorneys, to participate in building a defense against the charges they face, or to make informed decisions about the disposition of their cases. Upon information and belief, the State of Idaho will continue to fail to provide Plaintiffs with the representation to which they are entitled.

161. The representation provided to Plaintiffs is illustrative of the patterns of representation provided to indigent defendants throughout the State of Idaho and results from the structural and systemic failings that were identified in the 2010 NLADA Report and subsequent studies carried out over the last five years.

### **State Liability**

162. The United States Supreme Court has made clear that pursuant to the Sixth Amendment to the U.S. Constitution, it is the states' constitutional duty to provide for the effective assistance of counsel for criminal defendants who are unable to afford an attorney.

163. The State of Idaho has failed to provide any significant funding to support the provision of indigent defense services across the state.

164. The State of Idaho has failed to provide any supervision over the provision of indigent defense services across the state.

165. The State of Idaho has failed to establish or adopt any consistent, statewide caseload standards for public defenders in the state.

166. The State of Idaho has failed to establish or adopt any consistent, statewide performance standards for public defenders in this state.

167. In light of the NLADA's 2010 report, the ongoing work of the CJC and other committees tasked with studying indigent defense issues in Idaho, and the amendments to the public defense statutes in 2014, the State of Idaho has been on notice for more than half a decade that its public-defender system is failing to provide constitutionally sufficient representation.

168. Despite being on notice of the many failings of Idaho's indigent defense system, the State has failed to take sufficient action to remedy the deficiencies.

169. The State's failure to take sufficient steps to remedy the deficiencies of Idaho's indigent defense system is the proximate cause of the harm suffered by indigent criminal defendants throughout Idaho—including the named Plaintiffs and the Class they represent.

## **CLAIMS FOR RELIEF**

### **First Claim for Relief**

#### **Violation of the Sixth Amendment to the United States Constitution and 42 U.S.C. § 1983 (All Plaintiffs and the Class against All Defendants)**

170. Plaintiffs reallege and incorporate by reference as if fully set forth herein the allegations contained in all preceding paragraphs of this Complaint.

171. The Sixth Amendment to the United States Constitution requires the State of Idaho to ensure that all indigent criminal defendants receive meaningful and effective legal representation at all critical stages of their cases.

172. 42 U.S.C. § 1983 provides for suit against the government for constitutional violations.

173. The State of Idaho has violated the Sixth Amendment because it has failed to ensure that all indigent criminal defendants receive meaningful and effective legal representation at all critical stages of their cases, including at initial appearances, resulting in the constructive denial of counsel.

### **Second Claim for Relief**

#### **Violation of Article 1, Section 13 of the Idaho Constitution (Right to Counsel) (All Plaintiffs and the Class against All Defendants)**

174. Plaintiffs reallege and incorporate by reference as if fully set forth herein the allegations of all preceding paragraphs.

175. Article 1, Section 13, of the Idaho Constitution requires the State of Idaho to ensure that all indigent criminal defendants receive meaningful and effective legal representation.

176. The State of Idaho has failed to ensure that all indigent criminal defendants receive meaningful and effective legal representation at all critical stages of the case, including at initial appearance, in violation of Article 1, Section 13, of the Idaho Constitution.

**Third Claim for Relief**  
**Violation of the Fourteenth Amendment to the United States Constitution  
and 42 U.S.C. Section 1983**  
**(All Plaintiffs and the Class against All Defendants)**

177. Plaintiffs reallege and incorporate by reference as if fully set forth herein the allegations of all preceding paragraphs.

178. The Due Process Clause of the Fourteenth Amendment to the United States Constitution requires the State of Idaho to ensure that all indigent criminal defendants receive meaningful and effective legal representation.

179. 42 U.S.C. § 1983 provides for suit against the government for constitutional violations.

180. The State of Idaho has failed to ensure that all indigent criminal defendants receive meaningful and effective legal representation at all critical stages of the case, including at initial appearances, in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

**Fourth Claim for Relief**  
**Violation of Article 1, Section 13, of the Idaho Constitution (Due Process)**  
**(All Plaintiffs and the Class against All Defendants)**

181. Plaintiffs reallege and incorporate by reference as if fully set forth herein the allegations of all preceding paragraphs.

182. Under Article 1, Section 13, of the Idaho Constitution, the State of Idaho is required to ensure that all indigent criminal defendants receive meaningful and effective legal representation at all critical stages of the case, including at initial appearances.

183. The State of Idaho has failed to ensure that all indigent criminal defendants receive meaningful and effective legal representation at all critical stages of the case, including at initial appearances, in violation of Article 1, Section 13, of the Idaho Constitution.

**RELIEF REQUESTED**

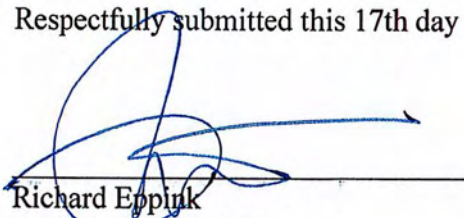
WHEREFORE, Plaintiffs respectfully request that this Court:

- A) Certify this case as a class action pursuant to Rule 23 of the Idaho Rules of Civil Procedure;<sup>48</sup>
- B) Declare that the State of Idaho is obligated to provide constitutionally adequate representation to indigent criminal defendants, including at their initial appearances;
- C) Declare that the constitutional rights of Idaho's indigent criminal defendants are being violated by the State on an ongoing basis, and provide a deadline for the State to move this Court for approval of specific modifications to the structure and operation of the State's indigent-defense system;
- D) Enjoin the State from continuing to violate the rights of indigent defendants by providing constitutionally deficient representation;
- E) Enter an injunction requiring the State to propose, for this Court's approval and monitoring, a plan to develop and implement a statewide system of public defense that is consistent with the U.S. Constitution and the Constitution and laws of the State of Idaho;
- F) Enter an injunction that requires the State to propose, for this Court's approval and monitoring, uniform workload, performance, and training standards for attorneys representing indigent criminal defendants in the State of Idaho in order to ensure accountability and to monitor effectiveness;
- G) Enter an injunction barring the use of fixed-fee contracts in the delivery of indigent-defense services in the State of Idaho;
- H) Award Plaintiffs and the Class reasonable attorneys' fees and costs incurred during the course of this litigation pursuant to 42 U.S.C. § 1988, I.C. § 12-117, the Private Attorney General doctrine and other applicable law; and
- I) Grant any other relief the Court deems necessary and proper to protect Plaintiffs and the Class from further harm.

---

<sup>48</sup> Plaintiffs' motion for class certification, along with their supporting brief, have been filed with this court in conjunction with this complaint.

Respectfully submitted this 17th day of June, 2015.



Richard Eppink  
ACLU of Idaho Foundation

Jason D. Williamson  
ACLU Foundation

Andrew C. Lillie  
Kathryn M. Ali  
Bret H. Ladine  
Jenny Q. Shen

*Attorneys for Plaintiffs*